

PAROLE OF PRISONERS (AMENDMENT) ACT.

New South Wales



ANNO UNDEVICESIMO

ELIZABETHÆ II REGINÆ

Act No. 33, 1970.

An Act to make further provision for the specification of non-parole periods in respect of certain prisoners and the release of prisoners on parole, and the constitution, powers, authorities, duties and functions of the Parole Board; for these purposes to amend the Parole of Prisoners Act, 1966; and for purposes connected therewith. [Assented to, 8th April, 1970.]

BE

Parole of Prisoners (Amendment)

No. 33, 1970 **B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title. **1.** This Act may be cited as the "Parole of Prisoners (Amendment) Act, 1970".

Amend-
ment of
Act No.
41, 1966.

2. (1) The Parole of Prisoners Act, 1966, is amended—

Sec. 3.
(Parole
Board.)

(a) by inserting next after subsection four of section three the following new subsections:—

(4A) The Governor may, when it appears to him to be expedient to do so, appoint a person having any of the qualifications referred to in paragraph (a) of subsection two of this section to be substitute Chairman of the Board during such period as the Governor determines, and that person shall, in the absence, during the whole or any part of that period, of both the Chairman and the Deputy Chairman of the Board, have the like powers, authorities, duties and functions as the Chairman.

(4B) Nothing in subsection (4A) of this section affects the operation of section thirty of the Interpretation Act, 1897.

(4C) Where a member of the Board (not being a person referred to in paragraph (a) of subsection two of this section) has been granted leave of absence by the Minister for a period, the Governor may appoint in his place a person to act as a member of the Board during that period, and that person shall, during that period and for the purposes of this Act, be deemed to be a member of the Board.

(4D)

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(4D) If a member of the Board who has been granted leave of absence as referred to in subsection (4C) of this section is the only member who is a woman, the person appointed to act in her place under that subsection shall also be a woman. No. 33, 1970

(b) by inserting next after section three the following new sections :— New secs.
3A, 3B,
3C, 3D.

3A. The Board shall, as soon as practicable after the thirty-first day of December in each year, furnish to the Minister for presentation to Parliament a report giving information as to the Board's activities during that year and setting out statistical information as to the number of cases considered by it, the number of persons released on parole pursuant to this Act, the number of parole orders amended, varied, rescinded or revoked by the Board, and such other matters as to the Board seem appropriate. Annual
report.

3B. The Governor may from time to time under and subject to the Public Service Act, 1902, appoint a secretary and such other officers as may be necessary for the purposes of this Act. Secretary
and other
officers of
the Board.

3C. A document purporting to be a certificate made or issued by the secretary of the Board recording any decision or determination of the Board shall in all courts and before all persons and bodies authorised by law to receive evidence be prima facie evidence of the matters therein set out. Certificate
of secretary.

3D. (1) No member of the Board shall be liable to any action whatsoever in respect of any act or thing done or omitted to be done in the bona fide exercise or purported exercise of any power, authority, duty or function conferred or imposed on the Board or any member of the Board by or under this or any other Act. Protection of
members of
Board.

(2)

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(2) Nothing in subsection one of this section shall exempt any member of the Board from liability to be surcharged with the amount of any payment which is disallowed by the Auditor-General and that member authorised or joined in authorising.

Sec. 4.
(Specifica-
tion of non-
parole
periods for
prisoners
sentenced
after com-
mencement
of this
Act and not
already
serving a
term of
imprison-
ment.)

(c) (i) by omitting subsection two of section four and by inserting in lieu thereof the following subsections :—

(2) Where a person to whom this section applies is, by a court, judge or justice, sentenced to a term of imprisonment and is not, at the time he is so sentenced serving a term of imprisonment, the court, judge or justice—

(a) shall, where the sentence is for a term of imprisonment of more than twelve months; and

(b) may, in any other case,

specify a period, in this Act referred to as a “non-parole period”, before the expiration of which that person shall not be released on parole pursuant to this Act.

(2A) A court, judge or justice shall not, in imposing a sentence, specify pursuant to subsection two of this section a period of less than six months, and any period so specified shall be deemed to commence at the time the sentence is imposed.

(ii) by omitting subsection four of the same section;

(iii) by omitting subsection five of the same section;

(d)

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(d) by inserting next after section four the following **No. 33, 1970**
new sections :—

4A. (1) This section applies where a person who is serving a term of imprisonment (in this section referred to as “the original term”) is, after the commencement of the Parole of Prisoners (Amendment) Act, 1970, sentenced by a court, judge or justice to another term of imprisonment (in this section referred to as “the additional term”) to be served cumulatively upon the original term or partly cumulatively upon, and partly concurrently with, the original term.

New secs.

4A, 4B,
4C.

Specification
of non-
parole
periods for
prisoners
sentenced
after com-
mencement
of Parole of
Prisoners
(Amend-
ment) Act,
1970,
and already
serving a
term of
imprison-
ment.

(2) Where this section applies, the court, judge or justice imposing the additional sentence—

(a) shall, where the total period during which the person sentenced is to be imprisoned, as a result of the imposition of the original term and the additional term, exceeds twelve months; and

(b) may, in any other case,

specify a period, in this Act referred to as a “non-parole period”, before the expiration of which the person so sentenced shall not be released on parole pursuant to this Act.

(3) Subsection two of this section has effect whether or not a non-parole period was, pursuant to this section or section four, 4B or five of this Act, specified in respect of the original sentence.

(4) A court, judge or justice shall not, in imposing a sentence, specify pursuant to subsection two of this section a period of less than six months and any period so specified—

(a) shall be deemed to have commenced on the day on which the original sentence was imposed;

(b)

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- (b) shall, subject to paragraph (c) of this subsection, be in substitution for any non-parole period specified, pursuant to section four, 4B, 4C or five of this Act, in respect of the original sentence;
- (c) shall not have effect to the extent that it would be shorter in duration than, or purport to expire earlier than, any non-parole period for which it is in substitution; and
- (d) shall not, where a non-parole period was not specified in respect of the original sentence, have the effect of rendering the person sentenced eligible to be released on parole pursuant to this Act earlier than the day on which he would have become eligible to be released in respect of the original term had he not been sentenced to the additional term.

(5) Subsection three of section four of this Act shall apply, mutatis mutandis, to and in respect of the specification of a non-parole period pursuant to this section.

Appeal.

4B. Where an appeal is lodged against the conviction of, or a sentence imposed on, a person by a court, judge or justice, the court determining the appeal may—

- (a) vary a non-parole period specified in respect of any term of imprisonment imposed upon the conviction or by the sentence, whether or not the court varies the term of imprisonment; or

(b)

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- (b) specify a non-parole period in respect of any such term of imprisonment, where no period had been specified pursuant to subsection two of section four, or subsection two of section 4A, of this Act, No. 33, 1970

and shall, in so doing, be subject to the same obligations, restrictions and limitations to which a court, judge or justice would be subject if it or he were determining the matter otherwise than in the course of an appeal.

- 4c. (1) Where the Board—
- (a) is satisfied that a court, judge or justice has, whether before or after the commencement of the Parole of Prisoners (Amendment) Act, 1970, imposed on a person a term of imprisonment that exceeds twelve months, that a non-parole period has not been specified pursuant to section four or 4A of this Act in relation to that term of imprisonment, and that no determination or reasons therefor have been given pursuant to subsection four of section four of this Act or pursuant to that subsection as applied by subsection five of section 4A of this Act, in relation to the failure to specify that period; and
- (b) is satisfied from the information that is before the Board that an appeal against the conviction of, or sentence imposed on, that person, or both, has not been lodged or, if lodged, has been determined,

Specification
of non-
parole
period by
Board in
certain cir-
cumstances.

the Board may specify a period which the court, judge or justice was entitled to specify pursuant to section four or 4A of this Act in relation to that term of imprisonment, and that period shall, for the purposes of this Act, be deemed to have been specified by the court, judge or justice.

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(2) Where the Board decides not to specify a period pursuant to subsection one of this section in any case where a sentence has been imposed and the Board is entitled to specify such a period, the Board—

- (a) if the sentence was imposed before the commencement of the Parole of Prisoners (Amendment) Act, 1970, may; or
- (b) if the sentence was imposed after that commencement, shall,

record its determination and the reasons therefor in its minutes.

Sec. 6.
(Parole
orders.)

(e) (i) by omitting paragraph (a) of subsection one of section six and by inserting in lieu thereof the following paragraph :—

(a) where a non-parole period was specified pursuant to section four, 4A, 4B or 4C of this Act in respect of a prisoner ;

(ii) by omitting from subsection two of the same section the word and symbol “revoke,” ;

(iii) by inserting next after the same subsection the following new subsections :—

(2A) The Board may rescind any parole order before the person in respect of whom the parole order applies has been released thereunder.

(2B) The Board may revoke any parole order after the person in respect of whom the parole order applies has been released thereunder.

(2c)

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(2C) Without affecting the generality of the No. 33, 1970 foregoing provisions of this section, the Board may rescind or revoke any decision or determination made by it in pursuance of this section in relation to a prisoner and may thereafter make any other decision or determination in pursuance of this section in relation to the prisoner as if the decision or determination so rescinded or revoked had not been made.

(2D) Notwithstanding anything in this section, where the Board is satisfied that a person to whom a parole order applies or applied has been sentenced by a court, judge or justice to a term of imprisonment of not less than three months in respect of an offence, committed during the parole period applicable to that person by virtue of that parole order, but committed after the commencement of the Parole of Prisoners (Amendment) Act, 1970, the Board—

(a) shall, if that person has been committed to prison to serve that term of imprisonment; and

(b) may, if that person has not been so committed,

revoke that parole order (if it has not already been revoked), whether or not that parole period has already expired.

(iv) by omitting from subsection three of the same section the words “or parole officer”;

(v) by omitting from the same subsection the words “of release on parole” and by inserting in lieu thereof the words “commencing on the day on which he was released from prison and ending on the day on which he was apprehended under such warrant”;

(vi)

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(vi) by omitting from subsection four of the same section the word "Where" and by inserting in lieu thereof the words "Subject to subsection (2D) of this section, where".

(2) Subject to the provisions of the Parole of Prisoners Act, 1966, as amended by this Act, any non-parole period specified before the commencement of this Act shall continue to have force and effect after that commencement.